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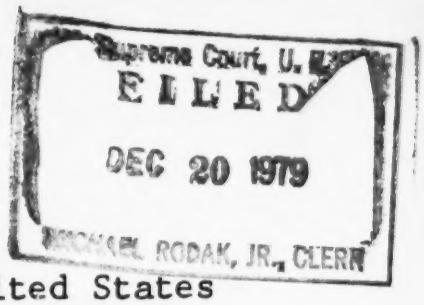

IN THE

Supreme Court of the United States

October Term 1979

No. .....

CLYDE I. COUGHENOUR
Petitioner

v.

WANDA F. MILLS
Respondent

On Petition for Writ of Certiorari from
the Court of Special Appeals,
State of Maryland

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On Petition for Writ of Certiorari from
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OPINION BELOW

The opinions of the Court of Special Appeals of Maryland are unreported and unpublished in the official Maryland Report and are set forth in the appendix, A2-10.

The oral opinion of the trial court, The

Circuit Court for Prince George's County, Maryland, is incorporated in toto in the Court of Special Appeals opinion, A4-8.

JURISDICTION

The judgment sought to be reviewed is an order of the trial court, The Circuit Court for Prince George's County, Maryland, entered the 19th day of July 1978 (A1) on an oral opinion delivered on the 30th day of June, 1978 (A4-8); and that of the Court of Special Appeals of Maryland, filed on the 16th day of April, 1979 (A2-10).

An Exceptions and Request for Reconsideration was filed with the trial court on July 11, 1978 (A22) and denied by Memorandum of Court dated July 19, 1978 (A11); reconsideration requested of the Court of Special Appeals of Maryland on the 25th day of April, 1979 (A25) was denied in letter dated May 3, 1979 (A12); Petition on Writ of Certioari, filed in the Court of Appeals of Maryland on May 25, 1979 was denied in order dated July19, 1979 (A13); with request for reconsideration to the Court of Appeals of Maryland filed on August 17, 1979, denied in order dated the 28th day of September, 1979 (A14).

Jurisdiction of this court is invoked pursuant to 28 U.S.C. Sec. 1257 (3), being a matter which draws into question the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. Maryland State constitution, statutes, law and procedure provide rights and protections, which extend to all its citizens without regard to representation or sex. The state courts violation of federal and state constitutions, statutes and law and of trial and appellate procedures in discrimination against Petitioner in proper person and because of sex, is repugnant to both state and federal guarantees, protections and rights. Jurisdiction of this Court is sustained by 7B J. Moore, FEDERAL PRACTICE J.C. 1257 (2d ed. 1974); C.A. Wright, LAW OF FEDERAL COURTS Sec 107, at pp. 491-492 (2d ed. 1970); Reed v. Reed, 404 U.S. 71 (1971); Stanley v. Illinois, 405 U.S. 645 (1972); Frontiero v. Richardson, 411 U.S. 677 (1973); Stanton v. Stanton, 421 U.S. 7 (1975); and Weinberger v. Weisenfeld, 420 U.S. 636 (1975).

QUESTIONS PRESENTED

I. Whether a man proceeding in proper person in a state domestic court loses his rights to due process and equal protection as provided for in the Federal Constitution, Fourteenth Amendment or it is error and repugnant to such rights for the state trial and appellate courts to ignore and refuse to apply, enforce and address such rights?

II. Wether the state trial and appellate courts making biased awards of money and custody and answering legal questions in such a way as to be in conflict with state constitution, statutes, laws and regulations is error and a denial of due process and equal protection and repugnant to the Federal Constitution Fourteenth Amendment?

III. Whether the state trial courts departure from the accepted and usual course of judicial proceedings by conducting the trial ex-parte in part with opposing counsel, generating a hostile and biased attitude toward Petitioner, is error and a denial of due process and equal protection and repugnant to the Federal Constitution, Fourteenth Amendment?

IV. Whether the appellate courts departure from the accepted and usual course of judicial

proceedings by perverting and violating the strict guidlines for reversing the trial Court's finding of facts and application of the law, when the appellate court under the guise of affirming the trial court without cause or justification created its own erroneous phantom facts to reverse the trial court's finding of facts and application of new discriminatory law so that it could sustain the trial court's ultimate award, was error and a violation of due process and equal protection and repugnant to the Federal Constitution, Fourteenth Amendment.

V. Whether the appellate court's sanctioning of the trial court's departure from the accepted and usual course of judicial proceedings by conducting ex-parte proceedings and by violating constitutional, statutory and legal protections, violated Petitioner's right to due process and equal protection and was error and repugnant to the Federal Constitution, Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the Constitution of the United States.

2. This case involves Article 46, Declaration of Rights, Equal Rights Amendment, Maryland

Constitution (A15).

3. This case involves Atricle 72A, Parent and Child, Sec. 1, Maryland Code Annotated (A16).

4. Also involved are:

a. Atricle 16, Sec. 5A, Maryland Code Annotated, Award of Costs ... (A15).

b. Article 27, Sec. 435, What shall be deemed perjury; 437, Contradictory statements; 439, Penalty (A15-16).

c. Maryland Rules of Procedure, Rules 886 and 1086, Review when action tried by lower court without jury (A17).

d. Maryland Rules of Procedure, Rule 1230, Code of Professional Responsibility, EC 7-24, EC 7-35, DR 1-102, DR 7-102, DR 7-110 (A17-19).

e. Maryland Rules of Procedure, Rule 1231, Canons and Rules of Judicial Ethics, Canons III, V, XI, XVI, XXXIII and Rules 1 and 14 (A19-20).

STATEMENT

Petitioner and Respondent were once husband and wife, on August 8, 1974, an absolute divorce was entered with custody of the four minor children of the marriage continued in Respondent mother.

On January 24, 1976, Petitioner remarried and on October 27, 1977 adopted the daughter of his wife by a previous marriage. On May 28, 1976, Respondent remarried and on September 11, 1976 gave birth to a boy child.

Petitioner filed a Petition for Modification of child custody in November of 1977. Hearings were

conducted on the 23rd and 28th days of June, 1978; on June 30, 1978, the children were interviewed in private, oral arguments were made and the opinion of the court rendered, the only proceedings on that day.

During the trial, without challenge or contradiction, there was evidence and testimony from eight witnesses intimately familiar with Petitioner's home, to the effect that with Petitioner the children would be better fed, clothed, housed, tutored in school and living in a pleasant surrounding in an atmosphere of love, warmth and harmony with a clean, wholesome, moral, spiritual, religious environment compatible with their own, with adults that are good influences, dependable and capable of preparing them for the future with confidence and self respect (A29-36).

Three witnesses, two called by Petitioner and one by Respondent, and Respondent herself in part, testified of mismanagement, financial problems, fighting over money, sex, religion, etc., frequent separations, and contentions in Respondents home with it being shown that the moral standards associated with her home (fornication, adultery, lying, etc.) were below that the children were trying to live; two qualified witnesses, Bishops in the children's church, testified that such conduct would have a harmful effect on the children trying to live a higher standard (A36-49, A54-56).

Respondent did not prove or even urge a single advantage to the children living with her. Her witnesses, with one exception, were ignorant of the conditions in her home (A38-40).

Respondent attributed all her problems to Petitioner in court but the evidence and her out of court statements showed this not to be the truth (A40-43). Her only knowledgable witness confirmed her troubled home and testified the best interest of the children would be for them to be in the custody and care of Petitioner (A35, 36, 38).

In summation on June 30, 1978, counsel for Respondent referred to trial related subject matter discussed that very morning with the chancellor out of court (A28).

The only action in the month of July, 1978 was Petitioner's filing a Request for Reconsideration and a statement by three of the four children, not of tender years, so distraut by continuation of custody in Respondent mother, they waived their protective veil of secrecy and certified publically they wanted to live with their father, Petitioner (A56-57). In early August of 1978 there was no action whatsoever in the case.

On August 9, 1978, the chancellor sent a letter officially placing the childrens statement in the record and deriding petitioner's conduct in July and August (R 311, E 259, A28).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

In this single domestic case many federal issues have been raised and need to be addressed. While they overlap somewhat, they have been collected and divided into five separate questions so that what amounts to a conspiracy against men and children in the domestic courts might be shown.

Because of the notorious reputation of Maryland and other state courts for systematically discriminating against men and children, denying them their federal and state constitutional, statutory and legal rights, a four page legal memorandum (1) was submitted to the trial court before opening remarks on June 23, 1978, addressing such rights. Specifically included were the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and Reed v. Reed, 404 U.S. 71 (1971) along with Maryland Constitutional and statutory and case law (A22). They were ignored by the trial court. On July 11, 1978 an Exceptions to Opinion and Motion for Reconsideration ...(2) to the trial court on essentially the same issues and authorities was submitted because the feared denial of such rights had actually taken place (A22-23). The request for reconsideration was denied by memorandum dated July 19, 1978 (R 308, E 257, A11)

On brief (3) filed on December 4, 1978, with the Court of Special Appeals of Maryland, the appellate court was ask to address these same issues (A23-25). Their decision is set forth A2-10). As the issues were again ignored, a Request for Reconsideration (4) was filed on the 25th day of April, 1979, again reviewing the state and federal issues (A25-26). The issues were again ignored by denial of reconsideration dated May 3, 1979 (A12).

Petition for Writ of Certioari (5) to the Court of Appeals of Maryland was then filed on May 25, 1979 to see if that, the court of last resort in Maryland, would answer the questions or force

the lower courts to answer them (A26-27). They denied the petition because of no showing that review was desirable and in the public interest by order dated July 19, 1979 (A13). On August 17, 1979, a Request for Reconsideration by the Full Court (6) was filed (A27-28), it too was denied by order dated September 28, 1979 (A14).

In summary by subject, discriminatory application of state and federal rights and protections was raised in all six pleadings. The procedural content and conduct of the trial, raised in and ignored by the trial court, was presented in all four pleadings to the appellate courts. The actions of the Court of Special Appeals of Maryland was addressed in the request for reconsideration to that court and in both pleas to the Court of Appeals of Maryland.

THE FEDERAL ISSUES ARE SUBSTANTIAL

I CONSTITUTIONAL RIGHTS AND PROTECTIONS WERE IGNORED

Invariably the courts in domestic cases cause the impoverishment of men so they must at some point avoid the expense of counsel and proceed in proper person or abandon their right to a hearing. When they proceed in proper person, they are treated as rebels against an established system and with traditional sex bias are denied equality and the protections and precedents provided by state and federal governments, addressed in II, the procedural safeguards of trial, set forth in III, an independent and impartial appellate review, covered in IV, and having the appellate courts supervise the procedural protections employed

by the trial court, reviewed in V.

Discrimination against one proceeding in proper person and because of sex is repugnant to the Federal Constitution, Fourteenth Amendment and can not be tolerated in a free society where the law is not a respector of persons, for there is little difference between anarchy, not having rights and not being able to enforce rights.

II. THE STATE TRIAL AND APPELLATE COURTS SYSTEMATICALLY AND REPEATEDLY ANSWERED LEGAL QUESTIONS AND MADE AWARDS IN CONFLICT WITH STATE CONSTITUTIONAL PROVISIONS, STATUTES, LAWS AND REGULATIONS

1 Maryland Rules of Procedure consider the conducting of ex-parte communications in an inter-parte proceeding to be a violation of the Canons of Judicial Ethics[1]. Both the judge and counsel for Respondent have placed in the record a continual addressing of trial related subject matter in private during and after the trial, see III below. The bias caused by such extrajudicial proceedings caused violations of other Canons of Judicial Ethics[2]. By the Rules, an aggravated or persistent failure to comply with the Canons of Judicial Ethics is a rule violation and a violation of any of the rules is conduct prejudicial to the proper administration of justice[3]. Since the

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1 Maryland Rule 1231, Canon XVI (A20)
2 Maryland Rule 1231, Canons III, V, XI, XXXIII (A19-20)
3 Maryland Rule 1231, Rules 1 and 14 (A20)
4 Northern Cent. Ry. Co. v. Rutledge, 48 Md. 262 (1878)

rules have the effect of law[4], Petitioners state and federal legal rights were violated.

(2) As an officer of the court, an attorney is prohibited from being deceitful, misrepresentation or other conduct that would be prejudicial to the administration of justice[5]; he is not to express his opinion or otherwise introduce testimony that is not sworn[6]; he is not to communicate with the judge in private on matters pending before the court[7]; h e is not to make false statements to the court[8]; and on appeal he is limited to the record below[9]. Counsel for Respondent continuously made derogatory remarks and lied about Petitioner to the court and on appeal created new evidence (A50-54) and conducted ex-parte communications with the court, see III below and A28. Rather than rebuke and punish such conduct, the courts condoned and rewarded it causing great harm tp Petitioner.

(3) While the resolution of conflicting testimony is normally within the perogative of the trier of facts when sitting without a jury[10], the trier is bound to follow the evidence and may not substitute his personal feelings for the evidence[11]. Perjury and conflicting statements are a crime[12] and in child custody cases considered a serious moral offense negating custody[13]. Respondent's

5 Maryland Rule 1230, DR 1-102, A17
Baker V. Otto, 180 Md. 53, 22 A.2d 924 (1941)
6 Maryland Rule 1230, EC 7-24, A18
7 Maryland Rule 1230, EC 7-35, DR 7-110, A18
8 Maryland Rule 1230, DR 7-102, A17
Klupt v. Bar Ass'n, 197 Md. 659, 80 A.2d 912 (1951)
9 Silver Spring Title Co. v. Chadwick, 131 Md. 131 A.2d 489, (1957)
10 McGrath v. McGrath, 213 Md. 442, 132 A.2d 109 (1957)

continuous and blatent lying (A43-49) were summarily excused and with no evidence whatsoever against Petitioner, both parties were considered dishonest. The conclusion by the court is an unjustifiable discrimination in violation of law.

(4) By state constitution "Equality of rights under the law shall not be abridged or denied because of sex"[14]. By statute, the mother and father of a child are the joint natural guardians and have equal powers and duties and neither parent has any right superior to the other concerning custody, the court is to give neither parent preference solely because of his or her sex[15]. The statute has been construed to mean what it says so that if the trial court finds benefits equally ballanced, it must delve further until some advantages are found to be with one of the parties[16]. By the award in the present case where all of the advantages and benefits to the children shown during the trial were with Petitioner father (A29-36) and only detrimental conditions were shown to exist in the home of mother Respondent (A36-38, A54-57), the constitution, statutory and case law of the state have been violated in continuing custody in the mother.

11 Loccetti v. Loccetti, 245 Md. 97 (1967)
12 Annotated Code of Maryland, Article 27, Secs. 435, 437, 439, A15-16
13 Hild v. Hild, 221 Md. 349, 157 A.2d 442 (1960)
14 Maryland Constitution, Declaration of Rights Amendment, Article 46, A15
15 Annotated Code of Maryland, Article 72A, Sec 1 (A16)
16 McAndrews v. McAndrews, 39 Md.App. 1, 382 A.2d 1081 (1978)

(5) There is no known law that prohibits the father from being granted custody of good or happy children or requires a father to prove actual damages to his children in the troubled home of the mother before he can be granted custody (A5-6). The chancellor created new and discriminatory custody conditions in violation of state constitution, statutes and case law, as set forth in (4) next above.

(6) The law requires that the wishes of children, not of tender years, be given weight as to which home they want to live in (A21). The chancellor's finding that the children had no preference and were non-commital as to which home they wanted to live in, is belied by both his own statement, best described as inconsistent judicial double talk:

> "The children are in a dilemna. They didn't answer me as to where they would like to go; at least didn't all of them answer. And those that answered had reasons for wanting to go to one place or another that were not very substantial." (A5)

and by the certified clear and unconditional statement by three of the four children that they want to live with their father, Petitioner (A56-57). The desires of the children were distorted and ignored in violation of law.

(7) Under Maryland law, in addition to the subject matter addressed in (3), (4), (5) and (6) above, the following are further examples of criteria given substantial weight in custody awards:

a) The physical needs of the children (A21).

b) The desires, education, good character and moral standards of the wife (A21).

c) The religious differences of the children and strains caused thereby in the home (A21).

As with the other issues in this case, these

state legal guidelines all dictated custody to Petitioner and were violated and ignored.

(8) By law there is a two-way financial responsibility in custody and court proceedings, in practice it is a one way affair where the man pays for everything.

(a) By statute the mother and father of a child are the joint natural guardians and jointly and severally charged with its support, care, nurture, welfare and education[15]. The courts consistently force men to make large contributions to child support, alimony and attorney fees, even when they have no money as through voluntary impoverishment. They refuse to force women to make like contributions. (A21) When Petitioner could not pay in full the large alimony and child support payments required in 1974 and 1975, he was found guilty of contempt of court and forced to take a second job (A58). Respondent mother, with children in diapers, worked full and part-time for over fourteen years of marriage to Petitioner . After separation, with the children in school, she all but retired from gainful employment, contributing little to her own support and nothing to that of the children. Even though the court found her able to work (A54), they refused to make her contribute child support as they did Petitioner.

(b) Respondent was ask in a request for admissions, to admit the validity of a letter (E 202, 203, Petitioners Exhibit No.9, A51-52). She refused, so Petitioner had the expense of bringing in the witness to verify the letter. The court refused to charge Respondent with the unnecessary expense.

(c) Whether the woman initiates or defends a law suit, she consistently is awarded attorney fees. In the instant case Respondent was responsible for a considerable portion of the time and expense of trial by her cross-petition for increased support payments, found to be unwarranted and denied. With the unstable and financially troubled home of Respondent and stable harmoneous home of Petitioner and desires of the children, There was more than ample reason for Petitioner to file a petition for modification. The court required Petitioner to pay Respondents attorney fees even though he could not afford one for himself, presumably under other Maryland law [17] consistantly used to discriminate against men.

The trial and appellate courts continuous systematic violation of the state constitution, statutes, laws and rules to discriminate against men is repugnant to the Federal Constitution, Fourteenth Amendment and demands correction.

III THE TRIAL COURT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

There is no trial known wherein the judge is given as much discretion and there is as little appellate review permitted as in child custody cases. If one side can prejudice the judge in private, they do not have to prove their case in public.

Justice demands a fair and impartial trial. To insure a fair trial Federal and State Constitutions and procedures allow one to address the evidence, to explain, to confront witnesses and

17 Maryland Annotated Code, Article 16, Sec. 5A (A15)

and cross examine, etc. It is also declared to be unethical to lie to the court and to conduct the trial ex-parte as addressed in II (1) and (2) above.

Both the chancellor and Respondent's attorney have placed in the record that ex-parte communications have taken place during and after the trial (A28). The gullability of the chancellor to and effectiveness of such communications are evidenced by the hostility expressed in his letter to Petitioner wherein mystery communications and conduct resulted in the conviction and condemnation of Petitioner.

> "In June I felt my ruling was correct. My belief was reaffirmed in July, and through Your actions in August, I am without any doubts whatsoever. Thank you for eradicating any doubts or fear I may have entertained in this matter." (R 311, E 259, A28)

With the lies told in open court, the imagination alone would be the limit in private.

There are at least four conclusions reached by the trial court that are so inconsistent with the evidence they can only be explained by bias and ex-parte generated hostilities.

1. The application of new and discriminatory law that a father can not be granted custody of good happy children until he can prove actual damage to them, II (5)above.

2. That neither party was honest when there were many instances where Respondent was proven to be a liar (A43-49) with no proof whatsoever against Petitioner or his witnesses.

3. That the children wouldn't answer and didn't have a preferance as to which home they wanted to live in when three of the four were so upset by the decision, they certified to the court

clearly and unconditionally that they wanted to live with their father, Petitioner, II (6)above.

4. The continuation of custody of the children in the mothers home filled with fighting, contententions, immoral conduct, physical needs, etc. when they could be living in the harmoneous stable home of the father where the moral standards lived are compatable with that of the children's own.

The preferential treatment by the trial court in departing from accepted procedures is repugnant and intolerable and demands tha strongest kind of censure.

IV THE APPELLATE COURT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURES

The trial court placed the appellate court in an awkward position. To perpetuate judicial bias against men, it had to affirm the award, yet it could not accept the trial court's new discriminatory law, that the father could not be granted custody of good happy children until he could prove actual damage to them (A4-6). Such law clashes with state constitution, statutes and case law as addressed in II (4) above. This necessitated a perversion of the finding of the trial court to the well established "welfare and best interest of the child" concept.

The chancellor at no time stated or implied that the best interest of the children was with the mother. Such statements as "... they're doing fine with the situation or in spite of the situation, I should say." and speaking to Petitioner father "I'm not saying that you haven't shown to me materially you can provide a better home, not saying you havn't proven to me that perhaps the stability in the home

the last couple of years has been better or more stable than the home of Mrs. Mills ... " do not imply that the best interest of the children is with the mother (A5).

The Court of Special Appeals found "It is our conclusion that no error has been shown" (A3) and quoted the standard for appellate review in Maryland (A8). Ignoring the actual findings of the trial court, the testimony and evidence, it equated the failure to prove actual damage by the Petitioner to a finding of the best interest of the children being with the mother. This actually amounted to a violation of its own conclusion and a reversal of the findings of fact and application of the law by the trial court. The appellate court found benefits to the children not found by the trial court, not found in the evidence, not found in the testimonies and not urged by Respondent.

To further compound their error and show their ignorance of the case, they stated Petitioner contended the chancellor's finding of fact to be clearly erroneous and that he alone and none of his witnesses testimony was adverse to Respondent and her home environment (A8). They then picked and chose and took out of context testimony and contradicted themselves, to justify their desired conclusion (A8-9).

As examples of the erroneous assertions by the appellate court:

a) Petitioner did not disagree with the chancellor on his finding of facts as to the welfare and best interest of the children, he did believe the findings to be grossly understated and unjustifiably discarded as being insignificant.

b) The detrimental conditions in Respondent's

home were attested to by her Bishop, by her Relief Society President, by her own witness and were eventually conceded by her with a feeble attempt made to blame Petitioner for all her troubles (A36-38). The evidence and witnesses, including her own, testified that her statements out of court blamed her problems on her present husband (A40-49).

c) Their quoted answer by her Bishop of improved conditions in her home (A9) did not fool anyone in court. It was addressed in opening remarks by Petitioner and the next question by the court revealed that the improvements in her home came in preparation for trial after the petition for modification was filed over six months previously (A57).

Such departure from accepted and usual judicial procedure to perpetuate sexual bias and deprivation of children's welfare and best interests is a violation of due process and equal protection and repugnant to constitutional guarantees and demand reprimand.

V THE APPELLATE COURT SANCTIONED THE TRIAL COURT'S DEPARTURE FROM THE USUAL COURSE OF JUDICIAL PROCEDURE

The function of the appellate court is to act as an independent and impartial body, to review the proceedings, the finding of facts in a case tried without a jury, the application of the law and the ultimate award of the trial court to see that the law was complied with[18]. In the instant case the appellate courts did not perform their duty, but rather functioned as defender and protector of the mother and the trial court[19]. By overt acts they distorted the evidence, the findings of the trial court and the application of law by the trial court, as set forth in IV above, and completely ignored

the violations relating to the integrity of the trial and ex-parte proceedings, addressed in II (1) and (2) and III above.

The condonation and sanctification of the trial court's denial of a fair and impartial trial, due process and equal protection by both appellate courts; and the Court of Appeals of Maryland condoning and sanctioning the Court of Special Appeals of Maryland perverting the trial court's finding of fact and application of the law to perpetuate sex bias, is repugnant to both state and federal guarantees of due process and equal protection.

This case presents substantial federal questions that go to the very corner stone of our whole system of justice, the sanctity of a fair and impartial trial, and to the interpretation and application of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution as it applies to state courts. It is but an example of the many ways men and children as classes of citizens are systematically abused and discriminated against in state domestic and appellate courts in defiance of their rights supposedly protected by both federal and state constitutions, statutes laws and rules. Because of the attitudes developed throughout the judicial system toward

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18 Maryland Rules of Procedure, Rules 886 and 1086 (A17)
Davis v. Davis, 280 Md. 119 (1977), cert. denied, 434 U.S. 939 (1978)

19 Montgomery Cty. Dept. Soc. Serv. v. Sanders, 38 Md.App. 406, 381 A.2d 1154 (1978)

domestic cases, the trial judge is no longer subject to the law or accountable for it, but rather he is the law. Innocent men and children are in ever increasing numbers being subjected to judicial bias and the resulting harm done thereby. As a result of the Honorable High Court intervening in and supervising criminal proceedings, criminals receive a fair and impartial trial and their rights to due process and equal protection are insured. In this, the year declared by the United Nations to be "The International Year of the Child", the Honorable High Court can do more for the children of this country than is accomplished by all the declarations and proclimations made by demanding that men and children in domestic courts be granted the same legal and constitutional protections as women and criminals.

CONCLUSION

By their silence on the constitutional issues and violation of state laws, the state courts have taken the intolerable position that a man proceeding in proper person, and children he is trying to help, have no rights in a domestic case. Wherefore, the Honorable High Court is ask to affirm the Maryland Courts in the five areas set forth or to inform them that men and children do have a right to a fair and impartial trial in domestic cases. Probable jurisdiction should be noted, and the case given plenary consideration, with briefs on the merits and oral argument, for resolution of the questions.

Respectfully submitted,

Clyde I. Coughenour
16607 Sutton Place
Woodbridge, Virginia
22191 pro se

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

FILED
JUL 19 1978

WANDA F. (COUGHENOUR) MILLS
Plaintiff

vs DR 73-362

CLYDE I. COUGHENOUR
Defendant

ORDER ON PETITION AND CROSS PETITION

This cause having come on for hearing on the 23rd, 28th and 30th days of June, 1978 on the defendant's Petition for Modification and other motions and the plaintiff's Gross Petition for Modification, upon consideration of the evidence presented, it is by the Circuit Court for Prince George's County, sitting on equity, this 19th day of July 1978.

ORDERED, that the defendant's Petition for Modification and other motions be and the same are hereby denied, and it is further,

ORDERED, that the plaintiff's Cross Petition for Modification be and the same is hereby denied, and it is further,

ORDERED, that the defendant, Clyde I. Coughenour, pay the sum of five hundred ($500.00) dollars toward the attorney's fees incurred by the cross petitioner, Wanda F. Mill, and it is further,

ORDERED, that the defendant pay the costs of this proceeding.

Robert H. Mason
JUDGE

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 854

September Term, 1978

CLYDE I. COUGHENOUR

v.

WANDA F. MILLS

Morton
Moylan
Moore,

JJ.

PER CURIAM

Filed: April 16, 1979

This appeal involves yet another controversy between divorced parents over the custody of minor children. In the instant case, the former wife was granted custody of the children more than six years ago. In late 1977, the former husband filed a petition for modification in the Circuit Court for Prince George's County seeking a transfer of custody to himself. The wife countered with a petition for an increase in support payments. The court (Mason, J.) heard extensive testimony over a period of two full days in mid-June 1978, and thereafter heard oral argument on June 30, 1978. At the conclusion of oral argument, the chancellor delivered an oral opinion in which the requests for modification by both parties were denied and the court ordered a payment by the former husband of attorney s' fees in the amount of $500.

The former wife has not appealed. However, as will be noted, the former husband has mounted a broad attack upon the action of the chancellor. It is our conclusion that no error has been shown.

I

The appellant and appellee were married on February 1, 1958. During the early years of their marriage, the wife worked to assist her husband in attending and graduating from college and law school. The former husband received a bachelor of science and mechanical engineering degree from the University of Maryland and a law degree from the University of Baltimore School of Law. His primary occupation has been with the United States Patent Office.[1]

---

1. Both on brief and in oral argument, appellant appeared pro se.

The parties separated on January 29, 1973, and on July 7, 1973, the wife was awarded a decree of divorce a mensa. An absolute divorce was granted on August 8, 1974. Custody of the parties' four children was awarded to the appellee. The children involved in the custody dispute are two boys, ages 17 and 11, and two girls, ages 15 and 13. Since the divorce, the former husband has remarried and resides with his second wife and her 8-year-old daughter, whom he has adopted, in Woodbridge, Virginia. The former wife, also remarried, resides with her present husband, a young child by her second marriage, and the four Coughenour children, in Glen Burnie, Maryland. Appellant and his present spouse, as well as appellee and the children of their union, are members of the Church of Jesus Christ of the Latter Day Saints.

Appellant produced 12 witnesses, including two Bishops of the Church, the Annapolis Ward, and members of the congregation, including couples who are his neighbors in Virginia. The former wife presented, in addition to her own testimony, the testimony of 7 witnesses, including a neighbor in Glen Burnie who is also an ordained minister of the Baptist Church, her sister, brother, sister-in-law, and brother-in-law, and another neighbor who belongs to appellee's church and was her "visiting teacher."

Set forth below are the findings and conclusions of the chancellor recited from the bench at the conclusion of oral argument:

> "THE COURT: Gentlemen, I'm going to make this relatively short. I have listened to all of the evidence; some evidence that perhaps exceeded the purpose of this hearing. But in trying to get a flavor for the entire situation, I allowed evidence in that might not otherwise be admissible.

There is no question in the court's mind that there is still a great deal of bad feelings between the two parties in this particular incident and that perhaps is having an affect on the children.

I enjoyed only one portion of this entire case, and that was my opportunity to talk to the children. A good portion of my ruling is coming from that opportunity.

Those are four of the most delightful children I have ever seen in a long period of time. They are happy, somewhat bashful, very much a credit.

Both of the individuals before the Court ought to be very proud of those four children.

The children are in a dilemna. They didn't answer me as to where they would like to go; at least didn't all of them answer. And those that answered had reasons for wanting to go to one place or another that were not very substantial.

They don't want to be in the middle. They love both of their parents; think both of their parents have a good home and both of the parents provide for them.

It's a very difficult situation and they knew what they were coming in there for and were not able to answer me positively one way or another.

But they're doing fine with the situation or in spite of the situation, I should say. Because, obviously, from the testimony Mr. Coughenhour has said it was clear as to which person not to believe. I have some question about some of the testimony from both sides.

I think there was a tendency to distort things in a way favorable and that's not unusual, happens everyday in the courtroom.

But it's not as clear to the Court as perhaps it is to Mr. Coughenhour or Mrs. Mills as to what side the Court should be taking.

In conclusion, my finding is as follows:

I don't find, Mr. Coughenhour, that you have shown me that the children have been harmed in any way and should be removed from that home.

I'm not saying that you haven't shown to me materially you canprovide a better home, not saying you haven't proven to me that perhaps the stability in the home the last couple of years has not been better or more stable than the home of Mrs. Mills, but those children are surviving; not only surviving, they are something that you've got to be proud of.

They are four, fine, young people who are doing well and I couldn't say to you if I signed an order granting what you're asking, I don't know what I could put down there justifying changing those children, because they are getting along extremely well.

- 4 -

They are very fine, fine young people, So I'm denying your request for modification of the order.

I'm also denying modification to change as far as support payments are concerned. I'm not convinced that the cross-petitioner has made out a case for an increase in child support.

So I'm denying that.

The only thing I'm granting is, Mr. Brooke, I'll grant an order as to attorney's fees in the amount of $500.

Thank you, gentlemen."

The scope and intensity of appellant's disagreement with the disposition of the case by the chancellor are shown by the assignment of error contained in appellant's brief. They are as follows:

"The chancellor erred in denying a modification of decree by not transferring custody of the children in view of the overwhelming weight of evidence showing advantages the children would receive with appellant and the disadvantages that exist with appellee:

I. The appellant's home is stable, filled with love, harmony, happiness, warmth, mutual respect and a spiritual atmosphere.

II. Appellee's witnesses, with one exception, were uninformed and ignorant of the conditions in her home and inconsistent as to the facts.

III. The physical needs of the children are not being met in appellee's home due to mismanagement and neglect of priorities; But they would be provided for in appellant's home.

IV. The atmosphere in appellee's home is detrimental to the rearing of children, being filled with contentions, fighting and separations.

V. The children's moral code is being lived in appellant's home where a spiritual atmosphere exists, but the code being lived in appellee's home clashes with the beliefs of the children and is a bad influence on them.

VI. Appellant and appellant's wife are better prepared to influence, train and care for the children than appellee.

- 5 -

VII. Appellee's husband has failed to appear and state his position with respect to the children.

VIII. The appellee is a chronic liar, if not a perjurer, whose testimony, like the sands, shifts with the wind of desire.

IX. The chancellor's finding and the law

A. The physical conditions of appellant's home were ignored.

B. The desires of the children were ignored.

C. The failure of appellee's husband to appear was ignored.

D. The desires, education, good character and moral standards of appellant's wife were ignored.

E. The religious differences of the children and strains caused thereby were ignored.

F. The dishonesty of appellee has been ignored.

G. The evidence and best interest of the children have been ignored.

H. The chancellor has ignored practically all guidelines for custody award.

I. Under the circumstances of this case the award of attorney fees to appellee is unjust and an abuse of discretion."

II

In our judgment, a fair reading of the chancellor's statement to the appellant, that he had not demonstrated "that the children had been harmed in any way and should be removed from that home," is that it constituted a finding that it was in the best interests of the minor children that they remain in the custody of the mother with whom they had been residing for a substantial period of time and whose health, character, and welfare had obviously impressed him favorably.

The standard for review of child custody proceedings by appellate courts has been clearly defined by the Court of Appeals in Davis v. Davis, 280 Md. 119 (1977), cert. denied, 434 U.S. 939 (1978). In Davis, the Court concluded that:

> "In sum, we point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 886 and 1086 applies. If it appears that the chancellor erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion."

Id. at 125-26. Therefore, assuming there are no clearly erroneous factual findings, the ultimate conclusion as to the custody of the child or children is within the sound discretion of the chancellor. Ross v. Hoffman, 280 Md. 172, 186 (1977).

The lower court used the correct standard to determine who was to have custody of the children: what is in their best interests. Kauten v. Kauten, 257 Md. 10, 11 (1970); Mullinix v. Mullinix, 12 Md. App. 402, 409 (1971). The appellant, however, contends that the chancellor was clearly erroneous in his findings of fact. In evaluating his contention, we note that the testimony of none of appellant's witnesses, except his own, was adverse to the natural mother or the home environment in which the four children are being raised. Indeed, appellant's witness, Bishop Branson Lowman, in response to a question from the court as to which of the two homes he regarded as the "preferential" home, testified:

> "I was originally of the opinion that the children would have been better off in Mr. Coughenour's home, and now I am not sure and the reason that I am not sure is that I think that there has been some improved stability in the Mills home. I don't know for what reason. The stability there from where I see it has improved, the children's attendance is good in church, and I could not say that she was an unfit mother." (Emphasis added.)

The appellant's other witnesses, his neighbors and fellow church members, were familiar with appellant's family and home surroundings and testified favorably in these respects. None of them, however, with the exception of fellow church member, Edna Durant, appeared to have any contact with appellee or her husband or their home surroundings. Mrs. Durant, also a member of the Church of the Latter Day Saints and president of the Relief Society, had visited appellee's home in connection with financial assistance which had been rendered the family, and had learned of some friction between the natural mother and her present husband.

Appellee's witnesses generally testified to thestability of appellee's home and her marital relationship. Testifying in her own behalf, appellee stated that although some problems had at one time existed between her and Mr. Mills, her present husband, it was her former husband, Mr. Coughenour, who was primarily responsible, because of his constant harassment.

We consider it unnecessary to trace, in elaborate detail, the testimony from both sides. What we have set forth is sufficient to disclose- as the chancellor himself openly stated.- conflicts in the testimony, particularly in that of the former spouse, and it is these conflicts which it is the

perogative of the trier of facts to reconcile and resolve. His findings of fact, based upon

such testimony, are to be accorded great weight because he has the best opportunity to observe the parties and their witnesses, their temperament, and demeanor and so to decide what is in the best interests of the affected children. Montgomery County v. Sanders, 38 Md. App. 406, 418-19 (1978).

Consequently, applying fully the principles of Davis v. Davis, above quoted, the basis of appellant's contention, that the chancellor erred, must ultimately be that he abused his discretion in refusing to transfer custody from the mother to himself. The chancellor, however, based his ultimate decision upon his own observation of the children and upon his interviews with them in chambers as well as from the evidence of their deportment, their schooling, their industry, and their loyalty to and affection for both parents.

In sum, the chancellor exercised sound discretion. His conclusion to continue custody in the natural mother was based upon findings of fact which we could not find to be clearly erroneous and upon a determination of what was in the best interests of the children. The record revealed insufficient circumstances of change to warrant a reversal. Neither do we find any abuse of discretion in the award to appellee of a $500 counsel fee. We therefore affirm.

ORDER AFFIRMED;
APPELLANT TO PAY THE COSTS.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

WANDA F. COUGHENOUR MILLS

Plaintiff,

vs. Equity No. DR 73-362

CLYDE I. COUGHENOUR

Defendant

MEMORANDUM OF THE COURT

July 19, 1978

Exceptions to Opinion Motion for Reconsideration or New Trial Under Rule 690 filed by the Petitioner-Defendant, Clyde I. Coughenour, in the above entitled cause is hereby denied.

Robert H. Mason
Judge
Robert H. Mason
Associate Judge

Copies sent to:

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Attorney for the Plaintiff-Respondent
6108 Old Silver Hill Road
District Heights, Maryland, 20028

Clyde I. Coughenour, Defendant-Petitioner
16607 Sutton Place
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COURT OF SPECIAL APPEALS
OF MARYLAND
Annapolis, Md. 21401
telephone 269-3646

Howard E. Friedman
clerk

David L. Terzian
chief deputy

Thayer A. Larrimore
deputy

May 3, 1979

Mr. Clyde I. Coughenour
16607 Sutton Place
Woodbridge, Virginia 22191

Re: Clyde I. Coughenour v. Wanda F. Mills
No. 854, September Term, 1978

Dear Mr. Coughenour:

Your motion for reconsideration was presented, considered and denied by the Panel on May 2, 1979. The mandate is due to be issued on May 16, 1979, and at that time, the record on appeal will be returned to the Clerk of the Circuit Court for Prince George's County.

Very truly yours,

Howard E. Friedman
Clerk

HEF/nze

cc: William E. Brooke, Esquire

In the

CLYDE I. COUGHENOUR

v.

WANDA F. MILLS

Court of Appeals of Maryland

Petition Docket No. 117

September Term, 1979

(No. 854, September Term, 1978 Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certioari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: July 19, 1979.

CLYDE I. COUGHENOUR

v.

WANDA F. MILLS

IN THE

COURT OF APPEALS

OF

MARYLAND

Petition Docket No. 117

September Term, 1979

(no. 854-September Term, 1978 Court of Special Appeals)

ORDER

Upon consideration of the request for reconsideration filed in the above entitled case, it is this 28th day of September, 1979,

ORDERED, by the Court of Appeals of Maryland, that the request be, and it is hereby, denied.

/s/ Robert C. Murphy
Chief Judge

MARYLAND'S CONSTITUTION, STATUTES AND RULES ARE ALL FOUND IN THE ANNOTATED CODE OF MARYLAND 1957 EDITION with volume and page as cited.

MARYLAND CONSTITUTION, DECLARATION OF RIGHTS, EQUAL RIGHTS AMENDMENT, ARTICLE 46 provides:

> Equality of rights under the law shall not be abridged or denied because of sex.
>
> (found in Vol. 9A, p. 126)

Maryland Article 16, Sec 5 A:
Award of costs and counsel fees in proceedings relating to child support, custody, visitation, arrearages, or otherwise to enforce decree pertaining thereto.

> In all cases where a person makes an application for a decree or modification of a decree with respect to the custody, the amount of support or visitation rights concerning a child or children of the parties, or files any form of proceeding to recover arrearages of child support or otherwise to enforce such decree, the court, after considering the financial status of both parties, their respective needs and whether there was substantial justification for instituting or defending the proceeding, may make such award of costs and counsel fees to either party as shall be just and proper under all the circumstances.
>
> (found in Vol. 2A, P. 15)

Maryland Article 27, Sec. 435:
What shall be deemed perjury,

> An oath or affirmation, if made wilfully and falsely in any of the following cases, shall be deemed perjury: first in all cases where false swearing would be perjury at common law; secondly, in all affidavits required by law to be taken; Thirdly, in all affidavits to accounts or claims made for the purpose of inducing any

court or officer to pass the accounts or claims; fourthly, in all affidavits required to be made to reports and returns made to the General Assembly or any officer of the government; fifthly, in all affidavits or affirmations made pursuant to the Maryland Rules ***

(found in Vol. 3A, p. 386)

Sec. 437, Contradictory statements,

Any person who shall make oath of affirmation to two contradictory statements, each of them in one of the cases enumerated in Sec. 435 and in either case shall make oath or affirmation wilfully and falsely, shall be deemed guilty of perjury; and to sustain an indictment under this section it shall be sufficient to allege and prove that one of the said two contradictory statements is or must be false and wilful, without specifying which one.

(found in Vol. 3A, p. 388)

Sec. 439, Penalty,

Every person who shall be convicted of perjury or subordination of perjury shall be sentenced to imprisonment in the jail or penitentiary for not more than ten years. (also p. 388)

Maryland Article 72 A, Sec. 1, Parent and Child,

Natural guardianship.

The father and mother are the joint natural guardians of their minor child and are jointly and severally charged with its support, care, nurture, welfare and education. They shall have equal powers and duties, and neither parent has any right superior to the right of the other concerning the child's custody. If either the father or mother dies, or abandons his or her family, or is incapable of acting, the guardianship devolves upon the other parent. Where the parents live apart, the court may award the guardianship of the child to either of them. Provided: The provisions of this article shall not be demed to affect the existing law relative to the appointment of a third person as guardian of the person of the minor where the parents are unsuitable, or the child's interests would be adversely affected by remaining under the natural guardianship of its parent or parents.

(found Vol. 6, p. 231)

Maryland Rules of Procedure

Rules 886 and 1086

Review when action tried by lower court without jury

When an action has been tried by the lower court without a jury, this court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.

(found in Vol. 9B, pp. 669,769)

Rule 1230. Code of Professional Responsibility

The code of Professional Responsibility of the American Bar Association, as set forth in Appendix F of the Maryland Rules, is hereby adopted.

(found in Vol. 9C, p. 397)

Appendix F, Code of Professional Responsibility

Canon 1, A lawyer should assist in maintaining the integrity and competence of the legal profession.

(found in Vol. 9C, p. 507)

Disciplinary Rules

DR 1-102 Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(found in Vol. 9C, p. 507)

DR 7-102 Representing a client within the bounds of the law

(A) In his representation of a client a lawyer shall not:

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(found in Vol. 9C, p. 532)

DR 7-110 Contact with officials.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except;

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writings to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adiquate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.

(found in Vol. 9C, p.535)

Canon 7, A lawyer should represent a client zealously within the bounds of the law

Ethical Considerations

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusions of relevant evidence and argument and the exclusion of all other considerations. The expressions by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissable evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue on his analysis of the evidence for any position or conclusion with respect to any of the foregoing matters. (found in Vol. 9C, p. 530)

EC 7-35 All litigants and lawyers should have access to tribunals on a equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before or which is to be brought before, a tribunal over

which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party, For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there be none to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

(found in Vol. 9C, p. 531)

Rule 1231 Canons and Rules of Judicial Ethics

The Canons and Rules of Judicial Ethics, as herein set forth, are adopted as Rules of this Court governing the conduct of all judges referred to in Rule 13 of the Rules of Judicial Ethics. (found Vol. 9C, p. 398)

CANONS OF JUDICIAL ETHICS

III. Constitutional Obligations

It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer, in and apply fundamental limitations and guarantees.

(found Vol. 9C, p. 398)

V. Essential Conduct.

A judge should be temperate attentive, patient, impartial, and, since he is to administer the law, and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts. (p. 399)

XI. Unprofessional Conductof Attorneys and Judges

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. (p. 400)

XVI Ex Parte Communications

A judge should not permit private interviews, arguments, or communications designed to influence his judicial action, where interests to beaffected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of a brief presented to him to be concealed from opposing lawyers. Ordinarily all communications of lawyers to the judge intended or calculated to influence action should be made known to opposing counsel.

A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. (p. 401)

XXXIII A Summary of Judicial Obligation

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; ***. (p. 406)

RULES OF JUDICIAL ETHICS

1. An aggravated or persistent failure to comply with the Canons of Judicial Ethics shall be deemed a rule violation. (p. 407)

14. Violation of any of these rules is conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 1227 (Removal or Retirement of Judges). (p. 410)

Maryland case law requires the wishes of children not of tender years to be considered:

Wilhelm v. Wilhelm, 214 Md. 80, 133 A.2d 423 (1957); Trenton v. Christ, 216 Md. 418, 140 A.2d 660 (1958); Franklin v. Franklin, 257 Md. 678, 264 A.2d 829 (1970); Sullivan v. Auslaender, 12 Md. App. 1, 276 A.2d 698 (1971); Ross v. Pick, 199 Md. 341, 86 A.2d 463 (1952).

Maryland case law requires the physical needs of the children to be considered:

Melton v. Connolly, 219 Md. 184, 148 A.2d 387, (1959); Daubert v. Daubert, 239 Md. 303, 211 A.2d 323 (1965); Cornwall v. Cornwall, 244 Md. 674, 224 A.2d 870 (1966).

Maryland case law requires the desires, education, good character and moral standards of the wife to be considered:

Glick v. Glick, 232 Md. 244, 192 A.2d 791 (1963); Insogna v. Insogna, 229 Md. 33, 181 A.2d 677

Maryland case law requires religious differences and strains to be considered:

Daubert v. Daubert, 239 Md. 303, 211 A.2d 323 (1965).

Maryland holds men responsible for monies even when they voluntarily impoverish themselves:

Donigan v. Donigan, 208 Md. 511 (1956); Pet v. Pet, 238 Md. 492, 209 A.2d 572 (1965); Colburn V. Coulburn, 15 Md. App. 503, 292 A.2d 121 (1972).

HOW THE FEDERAL QUESTIONS WERE RAISED BELOW

The federal questions were raised (1) in legal memorandum filed at the commencement of trial, (2) in an Exceptions ... and Motion for Reconsideration filed with the trial court, (3) in brief to the Court of Special Appeals of Maryland, (4) in a Request for Reconsideration to the finding of the Court of Special Appeals of Maryland, (5) in Petition for Writ of Certioari to the Court of Appeals of Maryland, and (6) in Request for Reconsideration to the Court of Appeals of Maryland. Examples from each are:

(1) Excerpt from "Legal Memorandum..." to the trial court filed before opening statement on June 23, 1978, in DR 73-362 Prince George's Circuit Court (R 290-294):

"1. The courts are required to treat both sexes equally:

(a) This is required by the equal protection clause and the due process clause of the Fourteenth Amendment to the United States Constitution. See Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971).

(b) It is required by Article 46 of the Declaration of Rights of the Maryland Constitution.

(c) It is specifically required in child custody cases by Article 72A, Sec. 1, of the Annotated Code of Maryland. See McAndrews v. McAndrews, 390 Md.App. 1 (1978)."

Other law was addressed including the contribution of women.

(2) Excerpt from "Exceptions to Opinion Motion for Reconsideration or New Trial Under Rule 690" filed July 11, 1978 with the trial

court (R 303-305).

"1. That the wrong law was applied in the award of custody in that the father is to be granted equal rights and granted due process and equal protection and to be given equal treatment and consideration in determining custody of children. Fourteenth Amendment to the United States Constitution; Reed v. Reed, 404 U.S. 71...(1971); Article 46 of the Declaration of Rights of the Maryland Constitution; Article 72A, Sec. 1 of the Annotated Code of Maryland; McAndrews ..."

Other law, the contribution of women, etc. was addressed.

(3) Excerpts from Petitioner's Brief to the Court of Special Appeals of Maryland, filed December 4, 1978, September Term 1978, No. 854:

From page 2, QUESTIONS PRESENTED,

"1. Wheather the Chancellor denied the father, appellant his legal, statutory and constitutional rights to be treated equally when he denied custody of the children to the father until he could prove the children were being harmed in the unstable home of the mother, appellee?

4. Whether the Chancellor denied the children, not of tender years, their legal, statutory and constitutional rights to live in the stable home of appellant, their father, as opposed to the unstable home of their mother, appellee, because their reasons for wanting to live with him were not very substantial?"

CONSTITUTIONAL QUESTION

7. Whether State Authority violated appellant's and the children's rights to due process and equal protection under the law and certain State Rights and Civil Liberty guarantees?"

On pages 2 and 3, U.S. Const. Amend. XIV, Sec. 1 was duplicated and on page 5 :

"This appeal was taken because the Circuit Court for Prince George's County has failed to grant appellant and his children the due process and equal protection granted to them by both the Federal Government and State Government as provided in their Constitutions, statutes and case law" (citations included the Fourteenth Amendment to the Federal Constitution and Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

On pages 18 and 19 of the Brief:

"The effectiveness and irregularity of such fabrications may be viewed in the statement made to appellant by the Chancellor in his letter of August 9, 1978:

> "In June I felt my ruling was correct. My belief was reaffirmed in July, and through your actions in August, I am now without any doubts or fear I may have entertained in this matter. (E 259)"

The only communication in this case in July was Exceptions filed on July 11, 1978, (E 254-256) and statement by the children filed on July 25, 1978 (E 258). There was no communication in early August. Who was the source of information? What was it? Where was the due process and equal protection granted by the 14th Amendment to the U.S. Constitution?

The criminal is afforded the protection of being confronted with the charges against him and given the opportunity to see and hear the evidence and witnesses against him, and to rebut and cross-examine, and is afforded the protection of a jury trial; but a father looking after the welfare of his children gets none of these.

If one will tell the stories set forth in VIII above under oath what would be the stories told outside the court room?

The Chancellor has not only failed to punish such conduct, but has condoned and rewarded it by placing it on a par with appellant, his witnesses and all the evidence. Is a trial to be decided on the facts or by the best and biggest liar:"

On pages 25 and 26 contribution by women is addressed.

(4) Excerpts from Request for Reconsideration to the Court of Special Appeals of Maryland filed April 25, 1979:

From page 1,

"This appeal was filed and the time and expense invested that specific legal questions be answered. The Honorable Court in its haste to dismiss and bury it have denied appellant his right to review and to be given the answers to these questions. The decision rendered is totally irrelevant to the questions at issue and is in and of itself a contradiction.

***

3. Is it a violation of due process and equal protection to allow one side in an inter-parte proceeding to conduct the trial in-part ex-parte?"

From page 4,

"THE ISSUE OF DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW HAS BEEN IGNORED

Can an attorney for one side in an inter-party proceeding go outside the courtroom (eg. E 298) and so prejudice the trier of the facts and renderer of a discretionary award, with no communication to or chance for rebuttal by the other side, that he makes derogatory remarks to the other side in the record (E 259), and still have the other side considered to have been afforded due process and equal protection under the law."

(5) Excerpt from Petition for Writ of Certioari in the Court of Appeals of Maryland, filed May 25, 1979; September Term 1979, No. 117,

From page 2,

"1. In a child custody trial where the judge is granted unlimited discretionary power with practically no appellate review, can the attorney for one side lie to the courts and conduct the trial ex-parte in secret in part and bias the judge and still have the other side considered to have been granted a fair and impartial trial?"

On pages 3, 5-12, 14 and 15 the constitutional issues were addressed.

From page 7,

"Such conduct is forbidden by the due process and equal protection clauses of the 14th Amendment to the United States Constitution, by the Code of Professional Responsibility and by the Canons of Judicial Ethics as set forth by the Maryland Rules of Procedure, ***"

From page 11,

"The findings of the Court of Special Appeals is so strained, illogical and replete with errors and repugnant to the finding of the trial court that it is useless in deciding the issues on appeal and confuses those simple issues. ...Their ignoring the issues and facts and applying the law to their own non-existent phantom facts amounts to a refusal to review and a denial of due process and equal protection under the law. ..."

Respondents failure to contribute child support is addressed on pages 3 and 12.

(6) Excerpts from Request for Reconsideration to the Court of Appeals of Maryland, filed August 17, 1979:

"The petition was filed because of violations to the most basic of rights, the right to a fair and impartial trial. This is of great concern to everyone who enters the courtroom. The concepts involved were considered to be of enough importance by the Honorable Court to include in the Maryland Rules of Practice the Code of Professional Responsibility and the Canons of Judicial Ethics. ... Equality as important and affecting thousands of trials is the issue of class discrimination forbidden bu state and federal constitutions, rules, statutes and case law. ...

When ex-parte prosecution is permitted, and a father is required to prove actual damage to a child in addition to best interest and welfare, and children's desires are ignored, and a mother after having regular employment for 14 years of marriage is permitted to contribute nothing to the support of her children and allowed to

collect attorney fees for justified litigation and the Court of Special Appeals is permitted to ignore the facts and findings of the trial court and create its own phantom issues rather than addressing those raised on appeal; the whole leguslative and judicial system is shown to be a farce."

EX PARTE COMMUNICATIONS

There were significant and continuing ex-parte communications with the court during and after the trial.

In final argument on June 30, 1978, a day with no prior proceedings in the courtroom, the attorney for Respondent stated (T 361, E 298):

"Incidentally, that particular point I made this morning about urine, the reason that wasn't brought in--

MR. COUGHENOUR: Objection.

Mr. BROOKE: Something that happened when she and he were married, that she had to check his urine. But any way, I didn't realize that when it was brought up before that's what it was."

The judge placed in the record a letter dated August 9, 1978 that included the following paragraph (R 311, E 259),

"In June I felt my ruling was correct. My belief was reaffirmed in July, and through your actions in August, I am without any doubts whatsoever. Thank you for eradicating any doubts or fear I may have entertained in this matter."

PETITIONERS HOME WAS SHOWN TO BE IDEAL FOR CHILD REARING

Petitioners witnesses were knowledgable of the conditions in his home and warm relationship with the children. The only knowledgable witness on her home, William Wolfe, called by Respondent, was quite familiar with both parties and testified that the children's best interest lie with Petitioner. Excerpts follow:

Bishop Condie (T 34-37, E 14-17)

Q How long have Clyde and Lorraine Coughenour been members of your unit?

A As I recall, approwimately three years.

Q In your interviews and in your association with Mr. and Mrs. Coughenour, has there ever come a time when you had any reason to believe that they were not living the standards of the church?

A No, there has never been a time.

Q When you have seen them together, what has been the relationship between Mr. and Mrs. Coughenour and the children?

A It's been a good relationship.

Q Based on your years of experience and training and your knowledge of the Coughenours now, could you, with any probability, predict the type of home that the Coughenours would provide for the Coughenour children?

A Yes. I would have no reservation in that regard at all.

James Kennedy (T 75, E 44)

Q What have you observed to be the relationship between the Coughenour children and the Coughenours?

A I found it to be--its a very normal relationship of father and mother and kids, very

loving, very together. Seems to be a lot of harmony. I saw no indication of any bother.

Pauline Almond (T 77-80, E 45-48)

Q Did there come a time when you moved into the Coughenour house?
A Yes, there did.
Q Would you briefly explain why?
A Well, my husband and I had a separation. We were having a few problems. My husband is alcoholic and I just moved out while we got things straightened out, and I moved in with the Coughenours.
Q How long were you with them?
A I think it was approximately three months.
Q Would you please explain The relationship that existed between the Coughenours and the Coughenour children?
A Well, a very nice close family. Everybody seemed to be happy and congenial.
Q Are you familiar with the standards set by the Church of Jesus Christ of Latter Day Saints?
A Yes, sir.
Q Were the Coughenours, to the best of your knowledge living the standards of the church?
A Yes, they are.
Q What was the general atmosphere that existed in the Coughenour home?
A It's one of, I guess, a lot of people with love to have. I think it is beautiful. Love, and just like I'd love for mine to be.
XQ What about meeting the needs of his family? Is Mr. Coughenour able to do that adequately?
A I think so, yes, sir.

Donna Cramer (T 82-84, E 50-52)

Q Do you know the Coughenours?
A Yes, I do.
Q Where is your home with respect to theirs?
A Across the street. Right across the street.
Q With what frequency do you visit the home?
A Oh, how often? Well, I see him just about every day.
Q Have you had opportunity to see and observe the Coughenour children, too, on their visits to the Coughenour home?
A Yes.
Q What did you observe?
A They are enjoying visiting with their father and having a good time, having a father children relationship.
Q Do you know of any troubles at all in the Coughenour home?
A No.
Q From your knowledge and observations, are there any standards in the Coughenour home that would be offensive to you?
A No.
XQ Did you say you have seen Mr. Coughenour with his children?
A Oh, yes.
Q Have you heard them in discussion?
A Yes.
Q Did you ever hear him making any derogatory remarks about the children's mother or her husband to the children?
A No. No.
Q Has he made any remarks to you?
A No.

J. Lorraine Coughenour, Petitioner's wife
(T 102-104, 117; E 67-69, 76)

Q Mrs. Coughenour, what is your education history?

A I graduated from Heidelburg American High School in Germany, spent one year at the Sacred Heart University in Japan, and one quarter at Brigham Young University in Utah.

Q Who has been the primary support of your child since she was born?

A Until my present marriage, I was the primary support.

Q Are you involved in any school activities?

A I have joined the PTA this year, and I was the room mother for the class this year.

Q Are you affiliated with any church?

A Yes. I am a member of the Church of Jesus Christ of the Latter Day Saints.

Q Are you involved in any church activities?

A I teach the five year olds in Sunday School. I teach the homemaking education class once a month in relief society, and I am a visiting teacher to four family members.

Q Mrs, Coughenour, are you living the standards set by the church?

A To the best of my knowledge.

Q Mrs. Coughenour, before your marriage to your husband, did you have sexual relations with him?

A No, I did not.

Q Are you ready, willing and able to provide the necessary care and training for the Coughenour children?

A I'm certainly willing to try.

Q What makes you think you can or cannot do it?

A Well, we have had them in our home now for the past two and a half years and we have developed, I'd say, a warm relationship on the weekends we have spent together.

XQ Does Mr. Coughenour make derogatory remarks to the children about their mother and the stepfather in your presence?

A No.

David Campbell (T 86, E 54)

Q What has been the relationship between the Coughenour children and the Coughenours?

A I would characterize it as that of children with parents. There is no straining no difficulty that I have observed.

Edmond Van Leuven (T 88,89; E 56,57)

Q How long have you known Lorraine Coughenour?

A Approximately six years.

Q You visited her home frequently?

A Yes. At least once a month.

Q Do you know if Lorraine is keeping the church standards or not?

A To my knowledge she is.

Q Have you ever had the opportunity to observe Mr. and Mrs. Coughenour with the Coughenour children?

A Yes, I have.

Q What is the relationship that you have seen between them?

A Very harmonious. There seems to be a great deal of love and affection, mutual respect.

Q Have you ever seen any friction, confrontations, between any of them?

A Never.

Wain Allen M.D. (T 99, E 64)

Q Have you had opportunity to observe the Coughenours and Coughenour chi ldren together?

A I have.

Q And what kind of a relationship did you observe?

A A warm loving relationship.

Q How do the children get along together?

A Well.

Q What was the relationship between the children and Mrs. Coughenour?

A Open and warm.

Q Do you know of anything either relating to the Coughenour children or to Clyde and Lorraine Coughenour that would cause problems in an intimate relationship?

A No.

Delbert Phillips (T 92,93; E 60,61)

Q Have you had opportunity to observe the Coughenours and the Coughenour children together?

A On several occasions. ... We spent oh three or four days together at Rehobeth Beach in the summer of 1976 ... .

Q Have you ever been in the Coughenour home?

A Yes.

Q What did you find the relationship to be between mrs. and mr. Coughenour?

A Very good. There were no problems just from what I could see.

Q What was the relationship between the Coughenours and the Coughenour children?

A They seemed to be one big happy family. No frictions that could be detected.

William Wolfe, Respondents witness (T 198-201, E 120-123)

XQ Have you had an opportunity to have seen and observed the Coughenour children with Mr. Coughenour?

A Yes.

Q What did you observe?

A That he performed all his fatherly duties and got them to church on time and generally was a good father.

Q What kind of relationship did there exist between Mr. Coughenour and his children?

A Love and affection.

Q Did the children show any fear for Mr. Coughenour?

A Not that I could observe.

Mr. Wolfe signed a statement that he knows both parties and it would be in the best interest of the children to have them in the home of Mr. Clyde Coughenour (T 200,201; E 122,123)

THE WITNESS: "Statement of Mr. William Wolfe, ... I have known Wanda Mills, formerly Wanda Coughenour, for several years and have had numerous occasions to be in her home primarily as a family home teacher. I have also known Mr. Clyde Coughenour for several years and have had occasions to see him with the four Coughenour children. From the knowledge I have it would be in the best interests of the children to have them in the home and custody of Mr. Clyde Coughen our.

I have read and understand the above statement and to the best of my belief, it is true and accurate."

And it is signed by me on June 20, 1978.

Q Mr. Wolfe, is this statement accurate?

A Yes.
Q Do you still feel the same now as you did last week when you signed that statement?
A Yes.

RESPONDENT'S TROUBLED HOME

Both Petitioner's and Respondent's witnesses testified of her troubled home.

Edna Durant (T 61-69, E 33-40)
Q Do you know Wanda Mills?
A Yes
Q Have you had opportunity to be in the Mills home?
A Yes
Q In what capacity have you been there?
A As a visiting teacher in the relief society organization and as a relief society president.
Q Were there any physical needs of the children?
A Yes
Q What type of needs did the children have?
A Generally speaking, there was need for food. When I was there.
...
A I made suggestions to her that I thought might help economically for the money to go further ... and that I thought would be nutritious meals
Q In general, then, since you do not want to go into specifics, what did you find as to the overall marital stability in the home?
A It was unstable.
Q Are you aware of any fighting in the home?
A Yes
Q Are you aware of periods of separation?

A Yes
Q Did she say what they were fighting about?
A Many things.
XQ Okay. Other than that, are you testifying then that you know of another separation that they had, based on what she told you?
A Brief ones, yes.
Q Such as what.
A He went away for periods of time, then would come back and then would leave again and come back.

Bishop Lowman (T 39, 40, 45, 47, 48: E 19, 20, 23, 24, 25)
Q As bishop, would you tell us briefly what are your responsibilities to the members of your unit?
A I am responsible for both their spiritual and physical, their temporal needs.
Q Are Mrs. Mills and the Coughenour children members of your unit?
A yes they are.
Q Bishop, have you on several occasions had conferences with Mrs. Mills?
A Yes, I have.
Q As a result of these conferences were you made aware of any problems in the home other than the physical needs?
A Yes
Q Were the financial needs the result of lack of money or the lack of management of money?
A That's a bit hard for me to determine, but I think the answer is probably both.
Q Have there been periods of separation?
A Yes
Q Are there contentions in the home?
A ...Yes, there have been some contentions.

William Wolfe, Respondent's withess
(T 197-198, E 119-120)
XQ Mr. Wolfe, you have been in the Mills home quite often.
A Yes
Q Are you aware of any fighting in the Mills home?
A I haven't been the home teacher for nine months, and I am not sure of the situation today.
Q But in the past there was fighting?
A Yes
Q Are you aware of any periods of separation between Mr. and Mrs Mills?
A Yes
Q Are you aware of mismanagement of resources in the Mills home?
A Yes

RESPONDENT'S WITNESSES WERE IGNORANT OF THE FACTS

Respondent's witnesses, with one exception, William Wolfe, were ignorant of the conditions in her home.

John Cook(T 166,167; E 101, 102)
Q You say you have only been in the home twice?
A Yes. I was trying to think today whether it was three times, but I remember at least twice. That is inside the house, that is.
Q And how many years is that?
A I guess since about November of '75. I have been in the yard, in the area a lot where the kids play.
Q Have you ever been in the home when Mr. Mills was there?
A Well, on the carport is all.

Q Then you really know nothing at all about the internal relationship between Mr. and Mrs. Mills?
A No

Carol Wood (T 193-195, E 115-117)
Q Have you had a chance to observe her and the children in the home?
A We would go and visit during the day and the children would be at school. I did get to see her with her little boy, but not with the older children.
Q Mrs. Wood, how many times did you say yoy were in the Mills home?
A Oh, let me see. I would say at least 10.
Q And was Mr. Mills there at any time you were there?
A No. Our visits were always made in the daytime. To my knowledge, he was not there.
Q Do you know anything about the interactions between Mr. and Mrs. Mills?
A No
Four brothers and sisters were called, Charles and Katherine Knight, Don and Sylvia Wilson, whose testimony was essentially the same exemplified by that of Sylvia Wilson (T 210, 211; E 130, 131)
Q How many times have you been in the Mills home in the last two years?
A I'd say roughly maybe 20, 30 times. We go over there quite a bit.
Q How many times was Mr. Mills there?
A Well, out of about 30 times, I would say about 28 times.
Q Are you aware of any fighting, tensions in the Mills home?
A No, not that I know of. They seem like a happy family.

Q Are you aware of any periods of separation between the Millses?
A No. I think he was gone one night, but he had to work night work or work over on his job.
Q Did I hear you say, was there plenty of food and clothing for the kids ...?
A Oh, yes.

RESPONDENT'S PROBLEMS OUT OF COURT

Respondent blamed her problems on Petitioner in court, but was different out of court, with examples:

(1) Respondent, Wanda Mills, Withess (T 259, E 152)

X Q Mrs. Mills, on one occasion did he not leave because you refused to sign over the vehicle to him?
A No
(T 231, 232; E 133, 134)
Q Have you had a difficult time financially?
A Yes
Q Have you and your husband worked out this--
A No. That is still a problem. This is one of the main things that has caused us to separate.

Redirect Examination by Mr. Brooke of his own witness, Mr. Wolfe (T 203, E 125),

A I think he asked me if I had knowledge of fighting in the home. I said yes.
Q How did you acquire that knowledge?
A Through Mrs. Mills.
Q What did she tell you?
A She told me that she--that her husband had been there and they had separated that he had tried to take the car and trade it in for a truck and so on and so forth.

(2) Petitioner, Clyde Coughenour, as witness (T 331, E 181)

I have never said anything deragatory about either one of them. I have never mentioned Mr. Mills drinking. I didn't even know he drank. I Have never mentioned that he smoked, I didn't even know he smoked, and I don't care. (T 334, E 184)

I would reiterate that I have made absolutely no statements or accusations that would cause any contentions between Mr. and Mrs. Mills. I wish them the best. I wish the best on everybody. I have no desire to see any home busted after having gone through it myself.

Cross Examination by Mr. Brooke of witness Edna Durant (T 68, E 39),

XQ But you are saying she told you that she and her husband were fighting; is that what you are saying, that she told you that she and her husband were fighting ?

THE COURT: For the record, she shook her head "yes"

Q Did she say what they were fighting about?
A Many things.
Q Were they arguing because her husband was upset at statements that the children would bring back from visiting their father? Was that a matter of contention, statements about him that their father told them?
A No. I don't recall ever mentioning that.

(3) On the witness stand the extensive records she had to keep were a source of her marital problems, Wanda Mills, (T 232, E 134),

A My husband, I am afraid of him, and my second husband knew this, and I was all the

the time working with records keeping records of this and records of that because he was all the time wanting proof ... and my second husband would get mad because I was all the time fooling with records.

When information was requested on discovery, she did not even have an income tax return. "Motion for Discovery and Production of Documents" filed February 28, 1978 (R 218, E 243),

3. An accounting of all monies she has expended on behalf of Clyde Jr., Lynda, Susie, and James Coughenour since January 1, 1973 including receipts therefor.

4. A copy of her state and federal income tax returns for 1974, 1975, 1976 and 1977 and any gift tax forms filed by her.

Answer to Motion for Discovery ..., filed March 13, 1978 (R 221, E 244),

3. That due to the Defendant's financial position, she would be unable to afford the accounting, investigation and attorneys fees which would be involved, and the Petitioner should be required to advance approximately $2,00 for this purpose as a condition requiring her to proceed.

(4) Her sex problems in court were over the education of the children in school,
Wanda Mills (T 231, E 133),
A On the sex, about what should be discussed. My second husband is more liberal. The children had a problem, a class on sex education, and he'd gone down to Annapolis to try to sign the papers trying to keep this from getting into school. My husband felt this was good for the children. He claims that parents should

teach, they should have knowledge.

Out of court it was adultry (T 305-307; E 170-172; E 198-201; Petitioner, Appellant's, Exhibit No. 8)

RESPONDENT IS A CHRONIC LIAR

While it would be difficult to count all the instances Respondent lied to the court, about a dozen examples were set forth in the brief to the Court of Special Appeals of Maryland, September Term, 1978, No. 854, pp. 10-13, a few examples are:

(1) Interrogatory, filed November 18, 1977, to Respondent (R 189, E 234),

8. List all court actions initiated by you or against you and all charges made by you or against you with any court or police or other official since January 1, 1973, except those in DR 73-362, including domestic, law, criminal, equity and traffic actions, including place and court or police, etc., filed with, date, docket number or other designation, and disposition of action.

Answer to the Interrogatory, filed January 20, 1978 (R 206, E 237),

*. I filed an assault charge in 1975 while working at the Goddard Space Agency, but I never received a follow-up notice from the authorities as to the disposition.

Respondent's testimony on the witness stand (T 303-306, E 168-171),

Q Mrs. Mills, in your direct you made a list of reasons that you and your husband were having problems, and you stated that that was all. Are you sure that there has never been any misloyalty between you and your husband?

A What do you mean by misloyalty?

Q Has either one of you ever gone out with another companion, been guilty of adultery?
A No.
Q Did you file an assault charge against your husband then?
A Yes, when I thought he was going to --
Q You have omitted this from your interrogatories. Was that deliberate or was that an accident?
A No, that was an accident.
Q Is that the only charge you have ever filed against your husband?
A Yes.
Q Mrs. Mills, I have here a true test copy of a subpoena and a bill of complaint filed in Anne Arundel County Circuit Court. This subpoena is made out to a Darvin E. Mills, 6506 Cahill Drive, Laurel, Maryland. It was issued June the 30th 1977, it was returned to the Court non est July the 7th, 1977.

Mrs. Mills, would you please read the counts in this bill of complaint?

***

A That the parties were married May 18, 1976 *** that although your complaintant has always been a good, chaste and affectionate wife towards the defendant hereinsaid the defendant did nevertheless commit the offense of adultery"

***

Q Mrs. Mills, were you telling the truth when you filed thi s bill of complaint or when you answered interrogatories you submitted to the Court?
A Well, according to that I wasn't telling

the truth, according to this. According to this, this should have been in there, I guess, for from what I understand.

The Equity Subpoena from Anne Arundel County was entered as Petitioner's Exhibit No. 8, E 198-201.

(2) Questions and answers to Respondent (R 252, E 148)
Q What were -- what were your daughter Lynda's grades?
A Hers were As and Bs and C. She got a C in French. But she has missed some time. She -- they just got those today.
A Mrs. Mills, I have here a report card that is out of date and it does not have the final grades, but as of the previous report period this shows Lynda with three Ds and one incomplete.
A Yes, because she was trying to -- she was going through a training program to go to voc-tech. She was doing a lot of studying to go to this college and she would have been accepted with 22 other girls and this was taking a lot of her time and she did pass this. ***

(3) On interrogatories she was asked to list all automobile accidents she was involved in (filed November 11, 1977, R 188-191 E 233-235, No. 7). She listed one (filed January 20, 1978, R 205-207, E 237-239, Nos. 5 and 7). It was shown that she was involved in at least 6 (T 262-269, E28, E 153-160, Petitioners, Appellant's,Exhibits Nos. 6 and 7, E 193-197).

(4) Her financial statement filed was completely erroneous (E 227, R 247, Appellee's Exhibit No. 8) from E 162-164, T 290-292 as example:

Q Mrs. Mills, in your financial statement, you said that you are spending $50 every month on the children, and you have testified that the children are in excellent health and I am very confused about this $50 a month when you indicated that it is closer to $50 a year.

A Well, like when Susie got hurt, you know, with the head, she had to have a tetanus shot, and Jimmy got hit with the car, and I took him to the emergency room.

Q Mrs. Mills, when you take your children to the emergency room, how do you pay for it?

A They send me a bill later, and I pay it, because you refuse to let the insurance with the Blue Cross take care of it.

Q Then you are not receiving any assistance at all from Blue Cross-Blue Shield?

A No. When Lynda went to get warts taken off her hand, I do think finally your insurance did cover that.

Q In the last year how many times have you taken the children to the emergency ward?

A Maybe four, five times.

Q Andhow much did you pay for all these visits? Did you receive any assistance at all?

A I wound up paying $68 and $35. I got the receipts. Because they called me later and said you wouldn't pay them, so I had

to pay them.

Q Mrs. Mills, I have here receipts for Blue Cross and Blue Shield. This Blue Shield --

A That was for surgery. Some of that was surgery.

Q It says that the charge was $10, and the plan paid $10.

A Okay.

Q I have here charges of $7 and $21, they paid $7 and $20.

A Okay. Now --

Q And I have one here where the charge was $21 and the plan paid $20.

A That's right, because they had to x-ray her hand before they cut the warts off.

Q Then I also have a receipt from January 31, which coincides with one of Susie's here where Blue Cross paid $43.50, and also have one here from Blue Cross on March the 21st where they paid $57.51.

Now, Mrs. Mills, when you take children to the emergency room practically all the charges are compensated by Blue Cross and Blue Shield are they not?

A No, not everything, because I have got bills that I paid, too.

(5) Respondent claims Petitioner left her destitute, removed the food and provided no support (Respondent, Appellee, Brief to Court of Special Appeals of Maryland, September Term, 1978, No. 854, page 2) when it was shown she took over $5,000 from joint accounts before he left, spent over $15,000 the first year of separation and that he made continuous payments

(T 127,128,145; E 80,81,97)

(6) To counter the testimony of her being well dressed while the children were in rags she explained that the clothes she had weren't really hers, but were from a job she had. There was no such job listed on her answer to interrogatories.

Petitioner, Clyde Coughenour, witness (E 92 T 140)

At this time the children's clothes were becoming a little tattered. They were still fairly well dressed, but they were becoming tattered, and to this day I have never seen Mrs. Mills in anything but first class clothing.

There have been many occasions when the children have visited that you could punch a hole through the knees in their church clothes. You could take the four fingers together and put them through holes in their shoes.

Petitioner as witness (T 332, E 182)

She (Respondent) also showed me a stack of photographs where she was hoping to become a model and she said that some of the clothes were bought with this, but she had an expensive wardrobe she had never had before, to my knowledge.

Petitioner's wife, Lorraine Coughenour (E 75, T 116)

A Because Jimmy was wearing sneakers with holes in them to church. He was wearing a suit that did not fit him any longer.

Respondent, Wanda Mills, witness (T227, E 288)

Q Now explain the circumstancesunder which you had the clothes?

A Well, I was a community shopper.

Q Proceed on what he did.

A When he saw the clothes, he just miscon-- he just whatever the word. Turned it all around and made out that I was buying these clothes with his support money, but that isn't the procedure at all.

Interrogatories, filed November 18, 1977, (R 189, E 234)

4. List all employment you have held since January 1, 1973, ...

Answer to Interrogatories, filed January 20, 1978 (R 206, T 238),

4. Worked as cook in Connell's Reastaurant for approximately 3 months in 1974- ...; worked as Security Guard at Dennis Detective Agency from June 1975 to September 1975 ...; for approximately 3 months toward the end of 1975 I worked as Security Guard at Goddard Space Center... .

As examples of her logic:

(a) She could not have committed adultery with the man she was associated with over an extensive period of the summer of 1977 because the day she was supposed to be committing adultery with him she was having a breakfast affair at church with the children. (T 234, E 136)

(b) Her husband could not have committed adultery during the four months he was gone as she charged, because when he went to the Department of Motor Vehicles in Glen Burnie to show them his unemployment card, he did not have a woman with him. (T 312,313; E 173, 174)

COUNSEL FOR RESPONDENT WAS NOT HONEST WITH THE COURTS

Respondent's attorney flooded the trial with his lies and accusations with no evidence whatsoever to support them. A few examples are:

(1) Prince George's County Circuit Court, June 23, 1978, DR 73-362, opening remarks,

MR. BROOKE: This has been a strain. When my client came in, her little girl was just clinging to her in fear because of statements that Mr. Coughenour had made to his daughter, and he is interfering with these children. He's making statements that have these children very upset--(T 19)

(2) Closing remarks, June 30, 1978,

MR. BROOKE: ... I think the problem now is one that's been all along, simply can't cope with him and the fact that he is able to go out and get people to make statements. A lot of people are just repeating what he told them. That is not really evidence in my opinion. (T 366)

(3) With pleadings for a trial, Respondent filed contempt of court charges for $1,650 arrearage (R 124, 125; E 215, 216)

Petitioner, Clyde Coughenour, witness (T 128-130, E 81-83)

In 1974 I was making regular child support and alimony payments. We had a hearing coming up for the final divorce and I was sending my personal checks directly to her. As the trial date approached , she informed me that she was not receiving her checks.

Mr. Coughenour: There was no good reason for her to refuse to expend these monies on the

children as it was intended and the court instructed her it should be.

THE COURT: Were the five checks eventually cashed?

MR. COUGHENOUR: Not all of them, sir. She came into court. She stated to the Court that I was $1,650 behind in the one-year interim between the a mensa and a vinculo trials. I produced receipts, and I believe they are in the file, to show that I could account for everything but $365.

She then accepted the $365 check. After she had received the check she started cashing these checks. She did cash two of them.

Petitioners receipts for all but $365 are found at R 132 +, E 217-219.

After the $365 was accepted as payment in full she cashed two of the checks at a local grocery store "Angels". Mrs. Chris Dembinsky, the cashier, was told by Respondent that she had been holding onto the checks, then over 60 days old, for a long time and she was requested to get the managers approval. Respondent returned to Mrs Dembinsky and reported the checks had been approved, they had not.

"The checks were cashed by Chris who was told by Wanda that she had been holding onto the checks for a long time for reasons and Chris sent wanda to the back of the store for Thomas' approval. Wanda returned to Chris and told her that Thomas had approved them. The checks were stale, being well over two months old. They were not approved." (E 202, 203, Petitioner, Appellant's Exhibit

No. 9)

Mr. Brooke in his brief to the Court of Special Appeals of Maryland, September Term 1978, No. 854, page 9 stated:

"The employee, Chris Dembinsky was called to identify his signature on the statement which in turn, was used as evidence of a statement made by the appellee (petitioner's exhibit 9, E 178). On cross-examination the witness acknowledged that he did not make the statement"

This is completely contrary to the finding of the court.

THE COURT: "All she said, her only testimony was she doesn't have any recollection of what happened. All she said was she remembers signing the piece of paper, and before she signed it, she read it, and the things that she knew about in this l etter were probably true when she signed it." (T 328, E 297, Petitioner, Appellant's, Reply Brief, page 1, to the Court of Special Appeals of Maryland, September Term 1978, No. 854)

(4) In his Brief to the Court of Special Appeals, page 11 of Appellee's Brief,

"in reviewing the appellant's brief, appellee submits that the argument about appellant's home being filled with love, as observed by various witnesses who were invited in on occasion where they would see what he wanted them to see, cannot possibly outweigh the history of the case as developed through the evidence."

(5) The following are excerpts from Petitioner's testimony and Respondent's witness, William Wolfe.

Clyde Coughenour, witness, (T 142, 143; E 94, 95)

"Another thing that created problems in the Mills home was the frequent absence of Mr. Mills. During the summer of 1977, Mrs. Mills had taken up companionship with a man. I understand his name was Clyde, but I'm not sure. He was an ex-military man. He had been in the Army, the Navy and the Air Force ... I was there and seen this man at the house. He accompanied her to Rehobeth Beach with the children. They were taking his apartment.

THE COURT: How do you know this?

Mr. COUGHENOUR: I was informed this by the children. One weekend when I took the children, my youngest daughter, Susie, did not accompany us because he was going to take her horseback riding, and after that I believe -- I believe it was the July 4 weekend, because they also went to the fireworks.

William Wolfe, Respondent's witness (T 197, E 119)

XQ In the summer of 1977, were you in the Mills home?

A Yes

Q You were shown pictures taken at Rehobeth Beach, were you not?

A Yes

Q The pictures were of Mrs. Mills, the Coughenour children and another man, were they not?

A Yes

Q Who was that other man?

A He was identified to me as someone in the Navy; I never heard a name.

In oral argument to the Court of Special Appeals of Maryland, Mr. Brooke stated that his witnesses testimony corroborating Petitioner's of Respondent's relationship with another man during her present marriage in the summer of 1977, was a case of mistaken identity and that the statement by the three children, that they wanted to live with Petitioner (R 310, E 258, A56) was procured by Petitioner's promise of a Slurppee.

THE COURT FOUND RESPONDENT ABLE TO WORK

Excerpt from the court's oral opinion, Thursday, August 1, 1974, Petitioner, Appellant's, Exhibit No. 5 (T 137, 138; E 89, 90, 190, 191)

"The Court is not satisfied that this lady can't go to work. I think there are some things she can do. I don't think she has worked that hard at it."

THE CHILDREN ARE BEING SUBJECTED TO RELIGIOUS STRAINS

Respondent, Wanda Mills, witness (T 230, 231; E 132, 133)

A Yes, In the beginning we had a religious problem and we went to conferences with the bishop, but we resolved that.
Q Okay. So that was no longer a problem?
A No, sir.
Q And that is something brought about by the fact of different religions?
A Yes.

Respondent about her present husband (T 233, E 135)

A Well, Darvin got fed up with the children coming in and harassing him about smoking. They'd go into lung problems, these filters in your lungs, you can't breathe good.

Bishop Lowman (T 40, 48, 49; E 20, 25, 26)

Q Are the Coughenour children trying to live the standards of the church?
A Yes
Q In your years of experience, have you found it to be a problem for children trying to live the standards of the church or any church, any high moral standards, have you found there to be a problem in children trying to live conforming to these standards where others are not keeping the standards?
A Yes, it is difficult for a child to live any standard that they like to live in which there is a disagreement in the home.
Q Would the Coughenour children be an exception to this?
A Maybe individually; not collectively.

Bishop Condie (T 31-34, E 11-14)

Q Bishop, what is the stand taken by the church on fornication?
A Fornication is grounds for excommunication and sometimes results in same.
Q If fornication is grounds for excommunication, then adultery would be the same, being between two married people; is that correct, sir?
A Yes, that's correct.
Q What about someone who chronically lies?
A Well, that likewise is contrary to the standards of the church.
Q Cheating?
A The same.

Q Is it possible for an unwed woman in the church to get pregnant and still be living the standards of the church?
A No, that is not possible.
Q Bishop, in your many years of experience in the church, have you ever noticed any difference between the homes of where there were all members of the home were members of the church, and those where there were not persons members of the church?
A Yes, there is a difference. I think it is quite obvious that when both parents are members of the church, it is much easier to teach the children in accordance with the standards of the church. ... One parent has one standard and the other parent another and that presents some conflict with the children

CERTIFIED STATEMENT OF THE CHILDREN

From notarized statement by the Coughenour children, James age 10, Susie age 12, Lynda age 14 (filed July 25, 1978; R 310; E 258):

1. That we informed Judge Mason in private that we desired to live with our father, Clyde I.Coughenour, or that we expected him to be granted custody of us.

2. That in view of our request not having been honored or he not having been granted custody, we want it to be known publically that we want to live with our father.

3.That we would prefer to all live together with our father.

4. That if we cannot all live with our father, then we want to live separately with him.

5. That we feel we have rights, if nothing more than human rights, and that we are old enough and intelligent enough to know and understand what we want to do and what is best for us.

6. That of our own free will and choice we have requested our father to use every legal means to enable us to live with him.

7. That nothing here means we do not love our mother, as we do.

8. That we are willing to talk to the Judge again if our position is not understood.

RESPONDENT'S HOME IMPROVEMENTS FOR TRIAL

The improvements in the Mills home being since the custody petition was filed in November of 1977, was known to the court,

Opening remarks by Petitioner (T 10,11)
" In the last three months with this case pending against them, respondent has been able to work fairly closely with Mr. Mills, and we believe they have been able to paint a picture that is not as bad as it really is. We believe it is really house dressing and that there is no chance or very little chance of them having a very happy, stable home of the type the children deserve."

After the quoted statement of the Court of Special Appeals fo Bishop Lowmans testimony at A9:

THE COURT: How long a period of time has it been since you have seen this improvement?

THE WITNESS: I would say within the last six months.

PETITIONER WAS IN CONTEMPT WHEN HE COULDN'T KEEP UP HIGH PAUMENTS AND HAD TO TAKE A SECOND JOB

WITNESS COUGHENOUR: It has been stated that I stopped payments. There has never been a two-week period since my separation that I did not put my child support, alimony payment. I did cut it back from $185 a week to $150 when I ran out of money. This is what the contempt of court case was about. I had to take an extra job to finish paying that off.